

Senate Daily Reader

Thursday, February 02, 2006

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State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

390M0109

SENATE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1007** -

01/31/2006

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
State Brand Board

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the composition of
2 livestock brands and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 40-19-7 be amended to read as follows:

5 40-19-7. The board shall reject any brands formed from any letter, number, or symbol which
6 is a duplicate of, or in conflict with, any brand previously registered for that location on an
7 animal. Any brand approved for registration shall be composed from the combination of no less
8 than two ~~or~~ and no more than three letters, numbers, or symbols, except for sheep. Only the
9 following ~~shall~~ may be accepted for registration:

10 (1) Letters A to P and R to Z, in the plain gothic style of print;

11 (2) Arabic numerals from two to nine, inclusive;

12 (3) Symbols, including diamond, half diamond, arrow, mill iron, heart, box, half box,
13 quarter circle, bar, cross, triangle, or slash;

14 (4) Character brands that were cancelled by the board for nonrenewal, but only if



1 registered by the person who owned the brand at the time it was cancelled, or if the
2 person is deceased, by the spouse or by the lineal descendants of the person.

3 ~~All brands that are~~ Any brand that is similar to any previously registered brand or that ~~the~~
4 ~~board determines may~~ in the board's determination could be changed to resemble a previously
5 registered brand may be rejected. Location of a brand on an animal ~~shall be~~ is construed as part
6 of the brand. A variation in the size of a letter, number, or figure does not constitute a new brand
7 and shall be rejected.

8 Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace,
9 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
10 effect from and after its passage and approval.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0325

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **HB 1039** -
01/20/2006

Introduced by: The Committee on Health and Human Services at the request of the
Department of Human Services

1 FOR AN ACT ENTITLED, An Act to revise certain provisions pertaining to the disposition of
2 funds collected on local exchange service lines, cellular telephones, and radio pager devices.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 49-31-51 be amended to read as follows:

5 49-31-51. There is hereby imposed an access fee of fifteen cents per local exchange service
6 line per month, fifteen cents per cellular telephone per month in accordance with the provisions
7 provided in subdivision 34-45-1(7), and fifteen cents per radio pager device per month to pay
8 for the program established in § 49-31-47. The access fee shall be paid by each local exchange
9 subscriber to a local exchange service, or by each cellular telephone or radio pager service
10 subscriber to the service provider, unless the subscriber is otherwise exempt from taxation. The
11 access fee shall be reported as a separate line or service and collected on the regular monthly
12 bill by each local exchange telecommunications company or other service provider operating
13 in this state. On or before the last day of the month following each two-month period, every
14 telecommunications company providing local exchange service or other service provided



1 specified in this section shall remit to the Department of Revenue and Regulation on forms
2 furnished by the department the amount of the access fee collected for that two- month period.
3 The secretary of revenue and regulation may grant an extension of not more than five days for
4 filing a remittance. The Department of Revenue and Regulation shall deposit ninety percent of
5 the money received under §§ 49-31-47 to 49-31-56, inclusive, into the telecommunication fund
6 for the deaf and ten percent in the telecommunication fund for other disabilities. The balance
7 in each fund in excess of an average of three months operating expenditures from the previous
8 state fiscal year may be used by the Department of Human Services to purchase
9 telecommunication assistive devices, communication aids and devices, home modifications and
10 assistive devices, and infrastructure and operational expenses to enhance communication
11 capacity for persons with disabilities and operational expenses for interpreter certification and
12 services for the deaf.

13 Section 2. The provisions of this Act are repealed on July 1, 2009.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

870M0003

HOUSE ENGROSSED NO. **HB 1056** - 01/25/2006

Introduced by: Representatives Hanks, Brunner, Elliott, Glover, Hennies, McLaughlin, and
Turbiville and Senators Gray and McCracken

1 FOR AN ACT ENTITLED, An Act to permit municipalities to delegate to employees the
2 authority to enter into certain contracts on behalf of the municipality.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 9-1-5 be amended to read as follows:

5 9-1-5. ~~Contracts~~ No contract of a municipality ~~shall not be~~ is valid unless the contract has
6 been authorized by a vote of the governing body at a duly assembled meeting thereof.
7 ~~— All written contracts of and conveyances by the municipality. Each written contract~~ shall be
8 executed in the name of the municipality by the mayor or president of the board of trustees, be
9 countersigned by the auditor or clerk, and have the corporate seal attached. However, the
10 governing body of a municipality may, by ordinance or resolution, delegate to any employee of
11 the municipality the authority to enter into a contract on behalf of the municipality and to
12 execute the contract and any other instrument necessary or convenient for the performance of
13 the contract subject to the limitations delegated by the governing body.



State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

456M0072

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1121** - 01/24/2006

Introduced by: Representatives Rounds, Cutler, Hills, Murschel, Olson (Ryan), Rhoden, Sigdestad, and Tornow and Senators Dempster, Duenwald, Duniphan, Gray, Koskan, Lintz, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to revise notification requirements for certain planning and
2 zoning changes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 11-2-28.1 be amended to read as follows:

5 11-2-28.1. An individual landowner may petition the board to change the zoning of all or
6 any part of the landowner's property. The petitioning landowner shall notify all other abutting
7 landowners by registered or certified mail of the petitioned zoning change at least seven days
8 before the public hearing is held on the matter by the planning commission. Property is
9 considered as abutting even though it may be separated from the property of the petitioner by
10 a public road or highway. If the affected property abuts, adjoins, or is within one mile of a
11 county border, the county auditor on behalf of the individual landowner shall also notify, by
12 registered or certified mail, the county auditor in the adjoining county of the petitioned zoning
13 change at least seven days before the public hearing is held on the matter by the planning
14 commission.



1 Section 2. That § 11-2-29 be amended to read as follows:

2 11-2-29. The planning commission shall hold at least one public hearing on any proposed
3 change or modification to the plan or ordinances. Notice of the time and place of the hearing
4 shall be given once at least ten days in advance by publication in a legal newspaper of the
5 county. The county auditor shall also provide a copy of the notice to the county auditor in the
6 abutting county at least ten days before the hearing on any proposed change or modification to
7 the plan and ordinances. At the public hearing, any person may appear and request or protest the
8 requested change.

State of South Dakota

EIGHTY-FIRST SESSION LEGISLATIVE ASSEMBLY, 2006

671M0139

HOUSE ENGROSSED NO. **HJR 1002** - 01/17/2006

Introduced by: Representatives Michels, Haley, Heineman, Hunhoff, and Putnam and
Senators Olson (Ed), Broderick, Gray, Peterson (Jim), and Schoenbeck at the
request of the Constitutional Revision Commission

1 A JOINT RESOLUTION, To repeal certain voided constitutional provisions regarding term
2 limits for United States senators and representatives.

3 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF SOUTH
4 DAKOTA, THE SENATE CONCURRING THEREIN:

5 Section 1. That at the next general election held in the state, the repeal of Article III, section
6 32 of the Constitution of the State of South Dakota, as set forth in section 2 of this Joint
7 Resolution, which is hereby agreed to, shall be submitted to the electors of the state for
8 approval.

9 Section 2. That Article III, section 32 of the Constitution of the State of South Dakota, be
10 repealed.

11 § 32. ~~Commencing with the 1992 election, no person may be elected to more than two~~
12 ~~consecutive terms in the United States senate or more than six consecutive terms in the United~~
13 ~~States house of representatives.~~



State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

257M0080

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HJR 1003** - 01/27/2006

Introduced by: Representatives Michels, Haley, Heineman, Hunhoff, and Putnam and
Senators Olson (Ed), Broderick, Gray, Peterson (Jim), and Schoenbeck at the
request of the Constitutional Revision Commission

1 A JOINT RESOLUTION, To revise certain constitutional provisions regarding the Legislature.
2 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF SOUTH
3 DAKOTA, THE SENATE CONCURRING THEREIN:

4 Section 1. That at the next general election, the following amendments to Article III and
5 Article IV of the Constitution of the State of South Dakota, as set forth in sections 2 to 10,
6 inclusive, of this Joint Resolution, which are hereby agreed to, shall be submitted to the electors
7 of the state for approval.

8 Section 2. That Article III, section 2 of the Constitution of the State of South Dakota, be
9 amended to read as follows:

10 § 2. ~~After the Legislature elected for the years 1937 and 1938 the~~ The number of members
11 of the house of representatives shall not be less than fifty nor more than seventy-five, and the
12 number of members of the senate shall not be less than twenty-five nor more than thirty-five.

13 ~~The sessions of the Legislature shall be biennial except as otherwise provided in this~~
14 ~~Constitution.~~



Section 3. That Article III, section 6 of the Constitution of the State of South Dakota, be amended to read as follows:

§ 6. The terms of office of the members of the Legislature shall be two years; they shall receive for their services the salary fixed by law under the provisions of § 2 of article XXI of this Constitution, ~~and five cents for every mile of necessary travel in going to and returning from the place of meeting of the Legislature on the most usual route.~~

No person may serve more than four consecutive terms or a total of eight consecutive years in the senate and more than four consecutive terms or a total of eight consecutive years in the house of representatives. However, this restriction does not apply to partial terms to which a legislator may be appointed ~~or to legislative service before January 1, 1993.~~

A regular session of the Legislature shall ~~be held in each odd-numbered year and shall not exceed forty legislative days, excluding Sundays, holidays, and legislative recess, except in cases of impeachment, and members~~ not exceed forty legislative days in each odd-numbered year and shall not exceed thirty-five legislative days in each even-numbered year except in cases of impeachment. Sundays, holidays, and days of legislative recess shall not be included as legislative days. Members of the Legislature shall receive no other pay or perquisites except salary, expenses, per diem, and mileage as provided by law.

~~A regular session of the Legislature shall be held in each even-numbered year beginning with the year 1964 and shall not exceed thirty-five legislative days, excluding Sundays, holidays and legislative recess, except in cases of impeachment, and members of the Legislature shall receive no other pay or perquisites except salary and mileage.~~

Section 4. That Article III, section 13 of the Constitution of the State of South Dakota, be amended to read as follows:

§ 13. Each house shall keep a journal of its proceedings and publish the same ~~from time to~~

1 ~~time, except such parts as require secrecy, and the~~ as provided by law. The yeas and nays of
2 members on any question shall be taken at the desire of one-sixth of those present and entered
3 upon the journal.

4 Section 5. That Article III, section 14 of the Constitution of the State of South Dakota, be
5 amended to read as follows:

6 § 14. In all elections to be made by the Legislature the members thereof shall vote ~~viva voce~~
7 and their votes shall be entered in the journal.

8 Section 6. That Article III, section 15 of the Constitution of the State of South Dakota, be
9 amended to read as follows:

10 § 15. ~~The sessions of each house and of the committee of the whole shall be open, unless~~
11 ~~when the business is such as ought to be kept secret~~ All legislative sessions, joint sessions, and
12 committee meetings shall be open to the public unless a two-thirds majority of the membership
13 declares the business is such as ought to be kept secret. No votes may be taken at any session
14 or meeting closed to the public.

15 Section 7. That Article III, section 17 of the Constitution of the State of South Dakota, be
16 amended to read as follows:

17 § 17. Every bill shall be ~~read twice~~ entered upon the journal, by number and title ~~once~~, when
18 introduced; and ~~once upon~~ shall be read, by number and title, prior to final passage; ~~but one~~
19 ~~reading at length may be demanded at any time before final passage.~~

20 Section 8. That Article III, section 29 of the Constitution of the State of South Dakota, be
21 amended to read as follows:

22 § 29. Notwithstanding any general or special provisions of the Constitution, in order to
23 insure continuity of state and local governmental operations in periods of emergency resulting
24 from ~~disasters~~ a natural or man-made disaster or a disaster caused by enemy attack, the

1 Legislature shall have the power and the immediate duty ~~(1)~~ to provide for prompt and
2 temporary succession to the powers and duties of public offices, of whatever nature and whether
3 filled by election or appointment, the incumbents of which may become unavailable for carrying
4 on the powers and duties of such offices, and ~~(2)~~ to adopt such other measures as may be
5 necessary and proper for insuring the continuity of governmental operations. In the exercise of
6 the powers hereby conferred the Legislature shall in all respects conform to the requirements
7 of this Constitution except to the extent that in the judgment of the Legislature so to do would
8 be impracticable or would admit of undue delay.

9 Section 9. That Article III be amended by adding thereto a NEW SECTION to read as
10 follows:

11 § 33. The members of the senate shall elect one member to preside as president of the
12 senate.

13 The members of the house of representatives shall elect one member to preside as speaker
14 of the house of representatives.

15 Section 10. That Article IV, section 5 of the Constitution of the State of South Dakota, be
16 amended to read as follows:

17 § 5. ~~The lieutenant governor shall be president of the senate but shall have no vote unless~~
18 ~~the senators be equally divided.~~ The lieutenant governor shall perform the duties and exercise
19 the powers that may be delegated to him by the Governor.

20 Section 11. The provisions of sections 9 and 10 of this Joint Resolution are effective
21 January 1, 2011.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0232

SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 49** - 01/31/2006

Introduced by: The Committee on Commerce at the request of the Department of Revenue
and Regulation

1 FOR AN ACT ENTITLED, An Act to modify the requirements for health discount plans.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
4 follows:

5 For the purposes of this chapter, the term, affiliate, means a person that directly, or indirectly
6 through one or more intermediaries, controls, or is controlled by, or is under common control
7 with, the person specified. For the purposes of this section, the term, control, or controlled by,
8 or under common control with, means the possession, direct or indirect, of the power to direct
9 or cause the direction of the management and policies of a person, whether through the
10 ownership of voting securities, by contract other than a commercial contract for goods or
11 nonmanagement services, or otherwise, unless the power is the result of an official position with
12 or corporate office held by the person. Control is presumed to exist if any person, directly or
13 indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten
14 percent or more of the voting securities of any other person. This presumption may be rebutted
15 by a showing made in the manner provided by § 58-5A-29.



1 Section 2. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
2 follows:

3 For the purposes of this chapter, the term, discount medical plan, means a business
4 arrangement or contract in which a person, in exchange for fees, dues, charges, or other
5 consideration, offers access for its members to providers of medical or ancillary services and
6 the right to receive discounts on medical or ancillary services provided under the discount
7 medical plan from those providers. The term includes a prescription drug discount plan.

8 The term does not include:

- 9 (1) A plan that does not charge a membership or other fee to use the discount medical
10 plan;
- 11 (2) Any product otherwise regulated under Title 58;
- 12 (3) A patient access program; or
- 13 (4) A medicare prescription drug plan.

14 Section 3. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
15 follows:

16 For the purposes of this chapter, the term, discount prescription drug plan, means a business
17 arrangement or contract in which a person, in exchange for fees, dues, charges, or other
18 consideration provides access for its plan members to providers of pharmacy services and the
19 right to receive discounts on pharmacy services provided under the discount prescription drug
20 plan from those providers.

21 Section 4. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
22 follows:

23 For the purposes of this section, discount medical plan organization, means an entity that,
24 in exchange for fees, dues, charges, or other consideration, provides access for discount medical

1 plan members to providers of medical or ancillary services and the right to receive medical or
2 speciality services from those providers at a discount. It is the organization that contracts with
3 providers, provider networks, or other discount medical plan organizations to offer access to
4 medical or speciality services at a discount and determines the charge to discount medical plan
5 members.

6 Section 5. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
7 follows:

8 Terms used in this chapter mean:

9 (1) "Ancillary services," includes audiology, dental, vision, mental health, substance
10 abuse, chiropractic, and podiatry services;

11 (2) "Facility," an institution providing medical or ancillary services or a health care
12 setting. The term includes:

13 (a) A hospital or other licensed inpatient center;

14 (b) An ambulatory surgical or treatment center;

15 (c) A skilled nursing center;

16 (d) A residential treatment center;

17 (e) A rehabilitation center; and

18 (f) A diagnostic, laboratory or imaging center;

19 (3) "Health care professional," a physician, pharmacist, or other health care practitioner
20 who is licensed, accredited, or certified to perform specified medical or ancillary
21 services within the scope of his or her license, accreditation, certification, or other
22 appropriate authority consistent with state law;

23 (4) "Marketer," a person or entity that markets, promotes, sells, or distributes a discount
24 medical plan, including a private label entity that places its name on and markets or

1 distributes a discount medical plan pursuant to a marketing agreement with a
2 discount medical plan organization;

3 (5) "Medical services," any maintenance care of, or preventive care for, the human body,
4 or care, service, or treatment of an illness or dysfunction of, or injury to, the human
5 body. The term includes physician care, inpatient care, hospital surgical services,
6 emergency services, ambulance services, dental care services, vision care services,
7 mental health services, substance abuse services, chiropractic services, podiatric
8 services, laboratory services, medical equipment and supplies, pharmacy services or
9 ancillary services;

10 (6) "Medicare prescription drug plan," a plan that provides Medicare Part D prescription
11 drug benefit in accordance with the requirements of the federal Medicare Prescription
12 Drug, Improvement and Modernization Act of 2003;

13 (7) "Member," any individual who pays fees, dues, charges, or other consideration for
14 the right to receive the benefits of a discount medical plan. Member does not include
15 any individual who enrolls in a patient access program;

16 (8) "Patient access program," a voluntary program sponsored by a pharmaceutical
17 manufacturer or a consortium of pharmaceutical manufacturers, that provide free or
18 discounted health care products directly to low-income or uninsured individuals
19 either through a discount card or direct shipment;

20 (9) "Provider," any health care professional or facility that has contracted, directly or
21 indirectly, with a discount medical plan organization to provide medical or ancillary
22 services to members;

23 (10) "Provider network," an entity that negotiates directly or indirectly with a discount
24 medical plan organization on behalf of more than one provider to provide medical

1 or ancillary services to members.

2 Section 6. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
3 follows:

4 This Act applies to all discount medical plan organizations doing business in South Dakota.

5 Section 7. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
6 follows:

7 A discount medical plan organization that is a health carrier registered pursuant to Title 58:

8 (1) Is not required to register as a discount medical plan organization. However, any of
9 its affiliates that operate as a discount medical plan organization in this state shall
10 comply with all provisions of this Act and shall register as a discount medical plan
11 organization;

12 (2) Is required to comply with sections 24 to 42, inclusive, of this Act.

13 Section 8. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
14 follows:

15 If a discount medical plan organization loses its registration, or other form of authority to
16 operate as a discount medical plan organization in another state, or is the subject of any
17 disciplinary administrative proceeding related to the organization's operating as a discount
18 medical plan organization in another state, the discount medical plan organization shall
19 immediately notify the director.

20 Section 9. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as
21 follows:

22 After the receipt of an application filed pursuant to § 58-17C-104, the director shall review
23 the application and notify the applicant of any deficiencies in the application.

24 Section 10. That chapter 58-17C be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Prior to registration by the director, each discount medical plan organization shall establish
3 an internet website in order to conform to the requirements of section 31 of this Act.

4 Section 11. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
5 as follows:

6 Any registration is effective for one year, unless prior to its expiration the registration is
7 renewed in accordance with this section or suspended or revoked in accordance with section 13
8 of this Act. At least ninety days before a registration expires, the discount medical plan
9 organization shall submit a renewal application form.

10 Section 12. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
11 as follows:

12 The director shall renew the registration of each holder that meets the requirements of this
13 Act.

14 Section 13. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
15 as follows:

16 The director may suspend the authority of a discount medical plan organization to enroll
17 new members or refuse to renew or revoke a discount medical plan organization's registration
18 if the director finds that any of the following conditions exist:

- 19 (1) The discount medical plan organization is not operating in compliance with this Act;
- 20 (2) The discount medical plan organization has advertised, merchandised, or attempted
21 to merchandise its services in such a manner as to misrepresent its services or
22 capacity for service or has engaged in deceptive, misleading, or unfair practices with
23 respect to advertising or merchandising;
- 24 (3) The discount medical plan organization is not fulfilling its obligations as a discount

1 medical plan organization; or

2 (4) The continued operation of the discount medical plan organization would be
3 hazardous to its members.

4 Section 14. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
5 as follows:

6 If the director has cause to believe that grounds for the nonrenewal, suspension, or
7 revocation of a registration exists, the director shall notify the discount medical plan
8 organization in writing specifically stating the grounds for the refusal to renew or suspension
9 or revocation and may pursue a hearing on the matter in accordance with the provisions of the
10 chapter 1-26.

11 Section 15. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
12 as follows:

13 If the registration of a discount medical plan organization is surrendered, revoked, or not
14 renewed, the discount medical plan organization shall proceed, immediately following the
15 effective date of the order of revocation or, in the case of a nonrenewal, the date of expiration
16 of the registration, to wind up its affairs transacted under the registration. The discount medical
17 plan organization may not engage in any further advertising, solicitation, collecting of fees or
18 renewal of contracts.

19 Section 16. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
20 as follows:

21 The director shall, in its order suspending the authority of the discount medical plan
22 organization to enroll new members, specify the period during which the suspension is to be in
23 effect and the conditions, if any, that shall be met by the discount medical plan organization
24 prior to reinstatement of its registration to enroll members. The director may rescind or modify

1 the order of suspension prior to the expiration of the suspension period. No registration of a
2 discount medical plan organization may be reinstated unless requested by the discount medical
3 plan organization. The director may not grant the request for reinstatement if the director finds
4 that the circumstances for which the suspension occurred still exist or are likely to recur.

5 Section 17. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
6 as follows:

7 In lieu of suspending or revoking a discount medical plan organization's registration
8 pursuant to section 13 of this Act, if the discount medical plan organization has been found to
9 have violated any provision of this Act, the director may enter into a consent order pursuant to
10 § 58-4-28.1.

11 Section 18. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
12 as follows:

13 A provider who provides discounts to the provider's own patients without any cost or fee of
14 any kind to the patient is not required to obtain and maintain a registration under this Act as a
15 discount medical plan organization.

16 Section 19. That § 58-17C-108 be repealed.

17 ~~—58-17C-108. Any person subject to registration pursuant to § 58-17C-104 shall maintain a~~
18 ~~surety bond in the amount of twenty thousand dollars issued by a surety company authorized to~~
19 ~~do business in this state, or establish and maintain a surety account in the amount of twenty~~
20 ~~thousand dollars at a federally insured bank, savings and loan association, or federal savings~~
21 ~~bank located in this state. Each surety bond and surety account is subject to the following:~~

22 ~~—(1) A copy of the bond or a statement identifying the depository, trustee, and account~~
23 ~~number of the surety account, and thereafter proof of annual renewal of the bond or~~
24 ~~maintenance of the surety account, shall be filed with the director of the Division of~~

Insurance;

~~(2) A surety account shall be maintained until two years after the date that the person subject to registration pursuant to § 58-17C-104 ceases operations in the state. Funds from any surety account may not be released to the person subject to registration pursuant to § 58-17C-104 without the specific consent of the attorney general;~~

~~(3) No surety on the bond of a person subject to registration pursuant to § 58-17C-104 may cancel such bond without giving written notice thereof to the secretary of state. Whenever the secretary of state receives notice of a surety's intention to cancel the bond of a person subject to registration pursuant to § 58-17C-104, the secretary of state shall notify the affected person that, unless such person files another twenty thousand dollar surety bond with the secretary of state or establishes a twenty thousand dollar surety account on or before the cancellation date of such surety bond, then such person subject to registration pursuant to § 58-17C-104 is no longer authorized to do business in this state;~~

~~(4) The bond or surety account shall be in favor of any person and the director of the Division of Insurance for the benefit of any person who is damaged by any violation of §§ 58-17C-104 to 58-17C-108, inclusive, including any violation by the supplier or by any other person which markets, promotes, advertises, or otherwise distributes a discount card on behalf of the supplier. The bond shall cover any violation occurring during the time period during which the bond is in effect; and~~

~~(5) Any person claiming against the bond or surety account for a violation of §§ 58-17C-104 to 58-17C-108, inclusive, may maintain an action at law against the person subject to registration pursuant to § 58-17C-104 and against the surety or trustee of the surety account. The aggregate liability of the surety or trustee of the surety~~

1 ~~account to all persons damaged by violations of §§ 58-17C-104 to 58-17C-108,~~
2 ~~inclusive, may not exceed the amount of the surety bond or account.~~

3 Section 20. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
4 as follows:

5 Each registered discount medical plan organization shall maintain in force a surety bond in
6 its own name in an amount not less than twenty thousand dollars and shall be in favor of any
7 person and the director of the Division of Insurance for the benefit of any person who is
8 damaged by any violation of §§ 58-17C-104 to 58-17C-108, inclusive, including any violation
9 by the supplier or by any other person that markets, promotes, advertises, or otherwise
10 distributes a discount card on behalf of the supplier. The bond shall cover any violation
11 occurring during the time period during which the bond is in effect. The bond shall be issued
12 by an insurance company licensed to do business in this state. A copy of the bond or a statement
13 identifying the depository, trustee, and account number of the surety account, and thereafter
14 proof of annual renewal of the bond or maintenance of the surety account, shall be filed with
15 the director.

16 Section 21. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
17 as follows:

18 In lieu of the bond required by section 20 of this Act, a registered discount medical plan
19 organization may deposit and maintain deposited with the director, or at the discretion of the
20 director, with any organization or trustee acceptable to the director through which a custodial
21 or controlled account is utilized, cash, securities, or any combination of these or other measures
22 that are acceptable to the director which at all times have a market value of not less than thirty-
23 five thousand dollars. All income from the deposit is an asset of the discount medical plan
24 organization.

1 Section 22. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
2 as follows:

3 Except for the director, the assets or securities held in this state as a deposit pursuant to
4 sections 20 and 21 of this Act are not subject to levy by a judgment creditor or other claimant
5 of the discount medical plan organization.

6 Section 23. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
7 as follows:

8 The director may examine or investigate the business and affairs of any discount medical
9 plan organization to protect the interests of the residents of this state based on the following
10 reasons, including complaint indices, recent complaints, information from other states, or as the
11 director deems necessary. An examination or investigation shall be performed in accordance
12 with the provisions of chapter 58-3. The discount medical plan organization that is the subject
13 of the examination or investigation shall pay the expenses incurred in conducting the
14 examination or investigation. Failure by the discount medical plan organization to pay the
15 expenses is grounds for denial of a registration to operate as a discount medical plan
16 organization or revocation of a registration to operate as a discount medical plan organization.

17 The discount medical plan organization is subject to the provisions of § 58-33-66.

18 Section 24. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
19 as follows:

20 If the discount medical plan organization cancels a membership for any reason other than
21 nonpayment of fees by the member, the discount medical plan organization shall make a pro rata
22 reimbursement of all periodic charges to the member.

23 Section 25. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
24 as follows:

1 A discount medical plan organization shall prepare written materials for its members that
2 specifies the benefits a member is to receive under the discount medical plan and that complies
3 with sections 38 to 42, inclusive, of this Act.

4 Section 26. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
5 as follows:

6 Any provider offering medical or ancillary services to members shall provide the services
7 in accordance with a written agreement entered into directly by the provider or indirectly by a
8 provider network to which the provider belongs.

9 Section 27. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
10 as follows:

11 A provider agreement between a discount medical plan organization and a provider shall
12 provide the following:

- 13 (1) A list of the medical or ancillary services and products to be provided at a discount;
- 14 (2) The amount or amounts of the discounts or, alternatively, a fee schedule that reflects
15 the provider's discounted rates; and
- 16 (3) That the provider will not charge members more than the discounted rates.

17 Section 28. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
18 as follows:

19 A provider agreement between a discount medical plan organization and a provider network
20 shall require that the provider network have written agreements with its providers that:

- 21 (1) Contain the provisions described in section 27 of this Act;
- 22 (2) Authorize the provider network to contract with the discount medical plan
23 organization on behalf of the provider; and
- 24 (3) Require the provider network to maintain an up-to-date list of its contracted providers

1 and to provide the list on a monthly basis to the discount medical plan organization.

2 Section 29. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
3 as follows:

4 A provider agreement between a discount medical plan organization and an entity that
5 contracts with a provider network shall require that the entity, in its contracts with the provider
6 network, require the provider network to have written agreements with its providers that comply
7 with the provisions of section 28 of this Act.

8 Section 30. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
9 as follows:

10 The discount medical plan organization shall maintain a copy of each active provider
11 agreement into which it has entered.

12 Section 31. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
13 as follows:

14 Each discount medical plan organization shall maintain on an internet website page an up-
15 to-date list of the names and addresses of the providers with which it has contracted directly or
16 through a provider network. The internet website address shall be prominently displayed on all
17 of its advertisements, marketing materials, brochures, and discount medical plan cards.

18 Section 32. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
19 as follows:

20 The provisions of sections 26 to 31, inclusive, of this Act, apply to those providers with
21 which the discount medical plan organization has contracted with directly or indirectly as well
22 as those providers that are members of a provider network with which the discount medical plan
23 organization has contracted directly or indirectly.

24 Section 33. That chapter 58-17C be amended by adding thereto a NEW SECTION to read

1 as follows:

2 A discount medical plan organization may market directly or contract with other marketers
3 for the distribution of its product. The discount medical plan organization shall have an executed
4 written agreement with a marketer prior to the marketer's marketing, promoting, selling, or
5 distributing the discount medical plan.

6 Section 34. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
7 as follows:

8 The agreement between the discount medical plan organization and the marketer shall
9 prohibit the marketer from using advertising, marketing materials, brochures, and discount
10 medical plan cards without the discount medical plan organization's approval in writing.

11 Section 35. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
12 as follows:

13 The discount medical plan organization shall be bound by and is responsible for the
14 activities of a marketer that are within the scope of the marketer's contract with the organization,
15 or are otherwise approved by or under the direction and control of the organization.

16 Section 36. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
17 as follows:

18 A discount medical plan organization shall approve in writing any advertisement, marketing
19 material, brochure, or discount card used by marketers to market, promote, sell, or distribute the
20 discount medical plan prior to their use.

21 Section 37. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
22 as follows:

23 Upon request, a discount medical plan organization shall submit to the director any
24 advertising, marketing material, or brochure regarding a discount medical plan.

1 Section 38. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
2 as follows:

3 Any advertisement of a discount medical plan organization shall be truthful and not
4 misleading in fact or in implication. An advertisement is misleading if it has a capacity or
5 tendency to mislead or deceive based on the overall impression that the advertisement is
6 reasonably expected to create within the segment of the public to which it is directed.

7 Section 39. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
8 as follows:

9 No discount medical plan organization may:

- 10 (1) Except as otherwise provided in this Act or as a disclaimer of any relationship
11 between discount medical plan benefits and insurance, or as a description of an
12 insurance product connected with a discount medical plan, use the term, insurance,
13 in any advertisement, marketing material, brochure, or discount medical plan cards;
- 14 (2) Use in any advertisement, marketing material, brochure, or discount medical plan
15 card, the terms, health plan, coverage, co-pay, co-payments, deductible, preexisting
16 conditions, guaranteed issue, premium, PPO, preferred provider organization, or
17 other term in a manner that could reasonably mislead an individual into believing that
18 the discount medical plan is health insurance;
- 19 (3) Use language in any advertisement, marketing material, brochure, or discount
20 medical plan card with respect to being licensed or registered by the Division of
21 Insurance in a manner that could reasonably mislead an individual into believing that
22 the discount medical plan is insurance or has been endorsed by the state;
- 23 (4) Make misleading, deceptive, or fraudulent representations regarding the discount or
24 range of discounts offered by the discount medical plan or the access to any range of

1 discounts offered by the discount medical plan;

2 (5) Have restrictions on access to discount medical plan providers, including, except for
3 hospital services, waiting periods and notification periods; or

4 (6) Pay providers any fees for medical or ancillary services or collect or accept money
5 from a member to pay a provider for medical or ancillary services provided under the
6 discount medical plan, unless the discount medical plan organization has an active
7 certificate of authority to act as a third party administrator in accordance with chapter
8 58-29D.

9 Section 40. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
10 as follows:

11 If the initial contact with a prospective member is by telephone, the disclosures required by
12 § 58-17C-106 shall be made orally and included in the initial written materials that describe the
13 benefits under the discount medical plan provided to the prospective or new member.

14 Section 41. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
15 as follows:

16 In addition to the general disclosures required by § 58-17C-106, each discount medical plan
17 organization shall provide to each new member a copy of the terms of the discount medical plan
18 in written materials.

19 Section 42. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
20 as follows:

21 The written materials required under this Act shall be clear and include information on:

22 (1) The name of the member;

23 (2) The benefits to be provided under the discount medical plan;

24 (3) Any processing fees and periodic charges associated with the discount medical plan;

- 1 (4) The mode of payment of any processing fees and periodic charges, such as monthly,
2 quarterly, or otherwise, and procedures for changing the mode of payment;
- 3 (5) Any limitations, exclusions, or exceptions regarding the receipt of discount medical
4 plan benefits;
- 5 (6) Any waiting periods for certain medical or ancillary services under the discount
6 medical plan;
- 7 (7) Procedures for obtaining discounts under the discount medical plan, such as requiring
8 members to contact the discount medical plan organization to make an appointment
9 with a provider on the member's behalf;
- 10 (8) Cancellation procedures, including information on the member's thirty-day
11 cancellation rights and refund requirements and procedures for obtaining refunds;
- 12 (9) Renewal, termination, and cancellation terms and conditions;
- 13 (10) Procedures for adding new members to a family discount medical plan, if applicable;
- 14 (11) Procedures for filing complaints under the discount medical plan organization's
15 complaint system and information that, if the member remains dissatisfied after
16 completing the organization's complaint system, the plan member may contact the
17 local insurance department in the member's state; and
- 18 (12) The name and mailing address of the registered discount medical plan organization
19 or other entity where the member can make inquiries about the plan, send
20 cancellation notices, and file complaints.

21 Section 43. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
22 as follows:

23 Each discount medical plan organization shall provide the director at least thirty days
24 advance notice of any change in the discount medical plan organization's name, principal

1 business address, mailing address, or internet website address.

2 Section 44. That § 58-17C-104 be amended to read as follows:

3 58-17C-104. ~~Any person, directly or indirectly, offering a plan or program providing a~~
4 ~~discount on the fees of any provider of health care goods or services, Any discount medical plan~~
5 organization that is not offered directly by a health carrier as provided by this chapter, shall
6 register in a format as prescribed by the director and shall file reports and conduct business
7 under the same standards as required of utilization review organizations in accordance with
8 provisions of §§ 58-17C-65 to 58-17C-66, inclusive. No health carrier may offer or provide
9 coverage through a person not registered but required to be registered pursuant to §§ 58-17C-
10 104 to 58-17C-108, inclusive. Any plan or program that is registered pursuant to § 58-17C-20
11 is not required to maintain a separate registration pursuant to §§ 58-17C-104 to 58-17C-108,
12 inclusive. ~~A~~ Any plan or program of discounted goods or services that is offered by a health
13 carrier in conjunction with a health benefit plan, as defined in §§ 58-18-42 and 58-17-66(9), or
14 a medicare supplement policy as defined in § 58-17A-1, or other insurance product that is
15 offered by an authorized insurer and that is subject to the jurisdiction of the director is not
16 required to be registered pursuant to §§ 58-17C-104 to 58-17C-108, inclusive. ~~A plan or~~
17 ~~program offered by a health care provider as defined in § 34-12C-1 is not required to register~~
18 ~~pursuant to §§ 58-17C-104 to 58-17C-108, inclusive, if the health care provider does not charge~~
19 ~~for the plan or program.~~

20 Section 45. That § 58-17C-106 be amended to read as follows:

21 58-17C-106. No person subject to registration pursuant to § 58-17C-104 may receive
22 personal information, money, or other consideration for enrollment in a plan or program until
23 the consumer has signed a contract or agreement with the person and no later than at the time
24 the contract is signed, provides, at a minimum, the following information, disclosed in a clear

1 and conspicuous manner:

- 2 (1) The name, true address, telephone number, and website address of the registered
3 person who is responsible for customer service;
- 4 (2) A detailed description of the plan or program, including the goods and services
5 covered and all exemptions and discounts that apply to each category thereof;
- 6 (3) All costs associated with the plan or program, including any sign-up fee and any
7 recurring costs;
- 8 (4) An internet website that is updated regularly or a paper copy where the consumer can
9 access the names and addresses of all current participating providers in the
10 consumer's area;
- 11 (5) A statement of the consumer's right to return the plan or program within thirty days
12 of its delivery to the person or agent through whom it was purchased and to have all
13 costs of the plan or program, excluding a nominal process fee refunded if, after
14 examination of the plan or program, the purchaser is not satisfied with it for any
15 reason;
- 16 (6) A statement of the consumer's right to terminate the plan or program at any time by
17 providing written notice or other notice, the form to be used for the termination
18 notice, and the address where the notice is to be sent if different than the address
19 provided in subdivision (1); and
- 20 (7) Notice that the consumer is not obligated to make any further payments under the
21 plan or program, nor is the consumer entitled to any benefits under the plan or
22 program for any period of time after the last month for which payment has been
23 made;
- 24 (8) That the plan is not insurance;

1 (9) That the range of discounts for medical or ancillary services provided under the plan
2 will vary depending on the type of provider and medical or ancillary service received;

3 (10) That the plan does not make payments to providers for the medical or ancillary
4 services received under the discount medical plan;

5 (11) That the plan member is obligated to pay for all medical or ancillary services, but will
6 receive discount from those providers that have contracted with the discount medical
7 plan organization.

8 The requirement that the contract or agreement be signed prior to any money or
9 consideration being obtained does not apply to a transaction in which payment by the consumer
10 is made by credit card or by means of a telephonic transaction so long as the disclosures
11 required by this section are provided to the consumer by way of postal mail, facsimile, or
12 electronic mail within ten business days of the consumer's enrollment.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

717M0561

SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 130** - 01/31/2006

Introduced by: Senators Dempster, Abdallah, and Bogue and Representatives Rave, Hennies,
and Rhoden

1 FOR AN ACT ENTITLED, An Act to impose the 911 monthly telephone surcharge to prepaid
2 telephone calling services.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-45-1 be amended to read as follows:

5 34-45-1. Terms used in §§ 34-45-1 to 34-45-17, inclusive, mean:

6 (1) "Basic 911," any service which provides the user of a public telephone system the
7 ability to reach a public safety answering point to report police, fire, medical, or other
8 emergency situations by dialing 911;

9 (2) "Enhanced 911," any emergency telephone system which provides the user of a
10 public telephone system the ability to reach a public safety answering point by dialing
11 the digits 911, and which routes an incoming 911 call to the appropriate public safety
12 answer point in a 911 service area and which automatically displays the name,
13 address, and telephone number of an incoming 911 call on a video monitor at the
14 appropriate public safety answer point;

15 (3) "Governing body," the board of county commissioners of a county or the city council



1 or other governing body of a county or municipality or the board of directors of a
2 special district;

3 (4) "Local exchange access company," any franchised telephone company engaged in
4 providing telecommunications services between points within a local calling area;

5 (5) "Local exchange access lines," any telephone line or cellular telephone that connects
6 a telephone subscriber to the local switching office and has the capability of reaching
7 local public safety service agencies;

8 (6) "911 emergency reporting system" or "911 system," any telephone system consisting
9 of network, database, and on-premises equipment which utilizes the single three-digit
10 number 911 for reporting police, fire, medical or other emergency situation;

11 (7) "911 emergency surcharge," any charge set by the governing body and assessed on
12 each local exchange access line which physically terminates within the governing
13 body's designated 911 service area. For a mobile telecommunications service, the
14 term, 911 emergency surcharge, means any charge set by the governing body and
15 assessed per cellular telephone identified within the governing body's designated 911
16 service area as determined by the customer's place of primary use as defined in 4
17 U.S.C. § 124 as in effect on July 28, 2000. Notwithstanding any other provision of
18 this chapter and for purposes of the surcharge imposed by this chapter, the surcharge
19 imposed upon mobile telecommunication services shall be administered in
20 accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000. For prepaid
21 wireless telephone calling services, the term, 911 emergency surcharge, means any
22 charge set by the governing body and assessed per month of service purchased within
23 the governing body's designated 911 service area;

24 (8) "Nonrecurring costs," any capital and start-up expenditure for telecommunications

equipment, software, database, initial training, and the purchase or lease of subscriber names, addresses and telephone information for the local exchange access company;

(8A) "Prepaid wireless telephone service," any wireless telephone service that is activated in advance by payment for a finite dollar amount of service or for a finite number of minutes that terminate either upon use by any person and delivery by the wireless provider of an agreed amount of service corresponding to the total dollar amount paid in advance or within a certain period of time following the initial purchase or activation, unless an additional payment is made;

(9) "Public agency," any municipality, county, public district, or public authority located in whole or in part within this state which provides or has the authority to provide fire fighting, law enforcement, ambulance, emergency medical, or other emergency services;

(10) "Public safety answering point," any twenty-four hour communications facility which receives all 911 service calls and reroutes the requestor or information to appropriate public or private safety agencies;

(11) "Recurring costs," any network access fee and other telephone charges, software, equipment, database management, maintenance, charges to maintain database of subscriber names, addresses, and telephone information from the local exchange access company. Recurring costs may include personnel expenses for a public safety answering point and any other costs directly related to the operation of the 911 service;

(12) "Service supplier," any person or entity who provides or offers to provide 911 system equipment, installation, maintenance, or exchange access services within the 911 service access area; and

1 (13) "Service user," any person who is provided local access exchange telephone service
2 in this state.

3 Section 2. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Each prepaid wireless telephone calling service provider shall remit the surcharge amount
6 on each account for which service has been paid and not yet used to the governing body each
7 calendar quarter pursuant to § 34-45-8. The surcharge amount shall be based on the place at
8 which the customer paid for the wireless telephone that is being used in connection with the
9 prepaid minutes or other units of usage. However, if that place is unknown to the provider, the
10 surcharge amount shall be based on the location associated with the wireless telephone number.
11 The prepaid wireless telephone calling service provider may deduct units of usage equivalent
12 to the amount of the surcharge from the unused telecommunication service, if the provider has
13 so notified the purchaser at or before the time of purchase.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

292M0432

SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 166** - 01/31/2006

Introduced by: Senators Knudson and Bogue and Representatives O'Brien and Cutler

1 FOR AN ACT ENTITLED, An Act to adopt the Uniform Athlete Agents Act.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. This Act may be cited as the Uniform Athlete Agents Act.

4 Section 2. In this Act:

5 (1) "Agency contract," an agreement in which a student-athlete authorizes a person to
6 negotiate or solicit on behalf of the student-athlete a professional-sports-services
7 contract or an endorsement contract;

8 (2) "Athlete agent," an individual who enters into an agency contract with a student-
9 athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an
10 agency contract. The term includes an individual who represents to the public that the
11 individual is an athlete agent. The term does not include a spouse, parent, sibling,
12 grandparent, or guardian of the student-athlete or an individual acting solely on
13 behalf of a professional sports team or professional sports organization;

14 (3) "Athletic director," an individual responsible for administering the overall athletic
15 program of an educational institution or, if an educational institution has separately



1 administered athletic programs for male students and female students, the athletic
2 program for males or the athletic program for females, as appropriate;

3 (4) "Contact," a communication, direct or indirect, between an athlete agent and a
4 student-athlete, to recruit or solicit the student-athlete to enter into an agency
5 contract;

6 (5) "Endorsement contract," an agreement under which a student-athlete is employed or
7 receives consideration to use on behalf of the other party any value that the student-
8 athlete may have because of publicity, reputation, following, or fame obtained
9 because of athletic ability or performance;

10 (6) "Intercollegiate sport," a sport played at the collegiate level for which eligibility
11 requirements for participation by a student-athlete are established by a national
12 association for the promotion or regulation of collegiate athletics;

13 (7) "Person," an individual, corporation, business trust, estate, trust, partnership, limited
14 liability company, association, joint venture, government; governmental subdivision,
15 agency, or instrumentality; public corporation, or any other legal or commercial
16 entity;

17 (8) "Professional-sports-services contract" an agreement under which an individual is
18 employed, or agrees to render services, as a player on a professional sports team, with
19 a professional sports organization, or as a professional athlete;

20 (9) "Record," information that is inscribed on a tangible medium or that is stored in an
21 electronic or other medium and is retrievable in perceivable form;

22 (10) "Registration," registration as an athlete agent pursuant to this Act;

23 (11) "State," a state of the United States, the District of Columbia, Puerto Rico, the United
24 States Virgin Islands, or any territory or insular possession subject to the jurisdiction

1 of the United States;

2 (12) "Student-athlete," an individual who engages in, is eligible to engage in, or may be
3 eligible in the future to engage in, any intercollegiate sport. If an individual is
4 permanently ineligible to participate in a particular intercollegiate sport, the
5 individual is not a student-athlete for purposes of that sport.

6 Section 3. (a) By acting as an athlete agent in this state, a nonresident individual appoints
7 the secretary of state as the individual's agent for service of process in any civil action in this
8 state related to the individual's acting as an athlete agent in this state.

9 (b) The secretary of the Department of Revenue and Regulation may issue subpoenas for any
10 material that is relevant to the administration of this Act.

11 Section 4. (a) Except as otherwise provided in subsection (b), an individual may not act as
12 an athlete agent in this state without holding a certificate of registration under section 6 or 8 of
13 this Act.

14 (b) Before being issued a certificate of registration, an individual may act as an athlete agent
15 in this state for all purposes except signing an agency contract, if:

16 (1) A student-athlete or another person acting on behalf of the student-athlete initiates
17 communication with the individual; and

18 (2) Within seven days after an initial act as an athlete agent, the individual submits an
19 application for registration as an athlete agent in this state.

20 (c) An agency contract resulting from conduct in violation of this section is void and the
21 athlete agent shall return any consideration received under the contract.

22 Section 5. (a) An applicant for registration shall submit an application for registration to the
23 secretary of state in a form prescribed by the secretary of state. An application filed under this
24 section is a public record. The application must be in the name of an individual and, except as

otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

- (1) The name of the applicant and the address of the applicant's principal place of business;
- (2) The name of the applicant's business or employer, if applicable;
- (3) Any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;
- (4) A description of the applicant's:
 - (A) Formal training as an athlete agent;
 - (B) Practical experience as an athlete agent; and
 - (C) Educational background relating to the applicant's activities as an athlete agent;
- (5) The names and addresses of three individuals not related to the applicant who are willing to serve as references;
- (6) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;
- (7) The names and addresses of all persons who are:
 - (A) With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and
 - (B) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent or greater;

1 (8) Whether the applicant or any person named pursuant to paragraph (7) has been
2 convicted of a crime that, if committed in this state, would be a crime involving
3 moral turpitude or a felony, and identify the crime;

4 (9) Whether there has been any administrative or judicial determination that the applicant
5 or any person named pursuant to paragraph (7) has made a false, misleading,
6 deceptive, or fraudulent representation;

7 (10) Any instance in which the conduct of the applicant or any person named pursuant to
8 paragraph (7) resulted in the imposition of a sanction, suspension, or declaration of
9 ineligibility to participate in an interscholastic or intercollegiate athletic event on a
10 student-athlete or educational institution;

11 (11) Any sanction, suspension, or disciplinary action taken against the applicant or any
12 person named pursuant to paragraph (7) arising out of occupational or professional
13 conduct; and

14 (12) Whether there has been any denial of an application for, suspension or revocation of,
15 or refusal to renew, the registration or licensure of the applicant or any person named
16 pursuant to paragraph (7) as an athlete agent in any state.

17 (b) An individual who has submitted an application for, and holds a certificate of,
18 registration or licensure as an athlete agent in another state, may submit a copy of the
19 application and certificate in lieu of submitting an application in the form prescribed pursuant
20 to subsection (a). The secretary of state shall accept the application and the certificate from the
21 other state as an application for registration in this state if the application to the other state:

22 (1) Was submitted in the other state within six months next preceding the submission of
23 the application in this state and the applicant certifies that the information contained
24 in the application is current;

1 (2) Contains information substantially similar to or more comprehensive than that
2 required in an application submitted in this state; and

3 (3) Was signed by the applicant under penalty of perjury.

4 Section 6. (a) Except as otherwise provided in subsection (b), the secretary of the
5 Department of Revenue and Regulation shall issue a certificate of registration to an individual
6 who complies with section 5(a) of this Act or whose application has been accepted under section
7 5(b) of this Act. The secretary of the Department of Revenue and Regulation shall submit a copy
8 of each certificate of registration issued to the Office of the Secretary of State.

9 (b) The secretary of the Department of Revenue and Regulation may refuse to issue a
10 certificate of registration if the secretary determines that the applicant has engaged in conduct
11 that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making
12 the determination, the secretary may consider whether the applicant has:

13 (1) Been convicted of a crime that, if committed in this state, would be a crime
14 involving moral turpitude or a felony;

15 (2) Made a materially false, misleading, deceptive, or fraudulent representation in the
16 application or as an athlete agent;

17 (3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary
18 capacity;

19 (4) Engaged in conduct prohibited by section 14 of this Act;

20 (5) Had a registration or licensure as an athlete agent suspended, revoked, or denied or
21 been refused renewal of registration or licensure as an athlete agent in any state;

22 (6) Engaged in conduct the consequence of which was that a sanction, suspension, or
23 declaration of ineligibility to participate in an interscholastic or intercollegiate
24 athletic event was imposed on a student-athlete or educational institution; or

1 (7) Engaged in conduct that significantly adversely reflects on the applicant's credibility,
2 honesty, or integrity.

3 (c) In making a determination under subsection (b), the secretary of the Department of
4 Revenue and Regulation shall consider:

5 (1) How recently the conduct occurred;

6 (2) The nature of the conduct and the context in which it occurred; and

7 (3) Any other relevant conduct of the applicant.

8 (d) An athlete agent may apply to renew a registration by submitting an application for
9 renewal in a form prescribed by the secretary of state. An application filed under this section is
10 a public record. The application for renewal must be signed by the applicant under penalty of
11 perjury and must contain current information on all matters required in an original registration.

12 (e) An individual who has submitted an application for renewal of registration or licensure
13 in another state, in lieu of submitting an application for renewal in the form prescribed pursuant
14 to subsection (d), may file a copy of the application for renewal and a valid certificate of
15 registration or licensure from the other state. The secretary of state shall accept the application
16 for renewal from the other state as an application for renewal in this state if the application to
17 the other state:

18 (1) Was submitted in the other state within six months next preceding the filing in this
19 state and the applicant certifies the information contained in the application for
20 renewal is current;

21 (2) Contains information substantially similar to or more comprehensive than that
22 required in an application for renewal submitted in this state; and

23 (3) Was signed by the applicant under penalty of perjury.

24 (f) A certificate of registration or a renewal of a registration is valid for two years.

1 Section 7. (a) The secretary of the Department of Revenue and Regulation may suspend,
2 revoke, or refuse to renew a registration for conduct that would have justified denial of
3 registration under section 6(b) of this Act.

4 (b) The secretary of the Department of Revenue and Regulation may deny, suspend, revoke,
5 or refuse to renew a certificate of registration or licensure only after proper notice and an
6 opportunity for a hearing. The secretary shall provide notice of such hearing and any action
7 taken in response to the hearing to the Office of the Secretary of State. The Administrative
8 Procedures Act applies to this Act.

9 Section 8. The secretary of the Department of Revenue and Regulation may issue a
10 temporary certificate of registration while an application for registration or renewal of
11 registration is pending.

12 Section 9. An application for registration or renewal of registration must be accompanied
13 by a fee in the following amount:

- 14 (1) One hundred dollars for an initial application for registration;
15 (2) Fifty dollars for an application for registration based upon a certificate of registration
16 or licensure issued by another state;
17 (3) Twenty-five dollars for an application for renewal of registration; or
18 (4) Twenty-five dollars for an application for renewal of registration based upon an
19 application for renewal of registration or licensure submitted in another state.

20 All moneys received pursuant to this section shall be deposited in the state general fund.

21 Section 10. (a) An agency contract must be in a record, signed or otherwise authenticated
22 by the parties.

23 (b) An agency contract must state or contain:

- 24 (1) The amount and method of calculating the consideration to be paid by the student-

1 athlete for services to be provided by the athlete agent under the contract and any
2 other consideration the athlete agent has received or will receive from any other
3 source for entering into the contract or for providing the services;

4 (2) The name of any person not listed in the application for registration or renewal of
5 registration who will be compensated because the student-athlete signed the agency
6 contract;

7 (3) A description of any expenses that the student-athlete agrees to reimburse;

8 (4) A description of the services to be provided to the student-athlete;

9 (5) The duration of the contract; and

10 (6) The date of execution.

11 (c) An agency contract must contain, in close proximity to the signature of the student-
12 athlete, a conspicuous notice in boldface type in capital letters stating:

13 **WARNING TO STUDENT-ATHLETE**

14 **IF YOU SIGN THIS CONTRACT:**

15 (1) **YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-
16 ATHLETE IN YOUR SPORT;**

17 (2) **IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER
18 ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE
19 AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND**

20 (3) **YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING
21 IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR
22 ELIGIBILITY.**

23 (d) An agency contract that does not conform to this section is voidable by the student-
24 athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay

1 any consideration under the contract or to return any consideration received from the athlete
2 agent to induce the student-athlete to enter into the contract.

3 (e) The athlete agent shall give a record of the signed or otherwise authenticated agency
4 contract to the student-athlete at the time of execution.

5 Section 11. (a) Within seventy-two hours after entering into an agency contract or before the
6 next scheduled athletic event in which the student-athlete may participate, whichever occurs
7 first, the athlete agent shall give notice in a record of the existence of the contract to the athletic
8 director of the educational institution at which the student-athlete is enrolled or the athlete agent
9 has reasonable grounds to believe the student-athlete intends to enroll.

10 (b) Within seventy-two hours after entering into an agency contract or before the next
11 athletic event in which the student-athlete may participate, whichever occurs first, the student-
12 athlete shall inform the athletic director of the educational institution at which the student-
13 athlete is enrolled that he or she has entered into an agency contract.

14 Section 12. (a) A student-athlete may cancel an agency contract by giving notice of the
15 cancellation to the athlete agent in a record within fourteen days after the contract is signed.

16 (b) A student-athlete may not waive the right to cancel an agency contract.

17 (c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay
18 any consideration under the contract or to return any consideration received from the athlete
19 agent to induce the student-athlete to enter into the contract.

20 Section 13. (a) An athlete agent shall retain the following records for a period of five years:

- 21 (1) The name and address of each individual represented by the athlete agent;
- 22 (2) Any agency contract entered into by the athlete agent; and
- 23 (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a
24 student-athlete to enter into an agency contract.

(b) Records required by subsection (a) to be retained are open to inspection by the secretary of the Department of Revenue and Regulation during normal business hours.

Section 14. (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:

- (1) Give any materially false or misleading information or make a materially false promise or representation;
- (2) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or
- (3) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(b) An athlete agent may not intentionally:

- (1) Initiate contact with a student-athlete unless registered under this Act;
- (2) Refuse or fail to retain or permit inspection of the records required to be retained by section 13 of this Act;
- (3) Fail to register when required by section 4 of this Act;
- (4) Provide materially false or misleading information in an application for registration or renewal of registration;
- (5) Predate or postdate an agency contract; or
- (6) Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

Section 15. An athlete agent who violates section 14 of this Act is guilty of a Class 6 felony.

Section 16. (a) An educational institution has a right of action against an athlete agent or a

1 former student-athlete for damages caused by a violation of this Act. In an action under this
2 section, the court may award to the prevailing party costs and reasonable attorney's fees.

3 (b) Damages of an educational institution under subsection (a) include losses and expenses
4 incurred because, as a result of the conduct of an athlete agent or former student-athlete, the
5 educational institution was injured by a violation of this Act or was penalized, disqualified, or
6 suspended from participation in athletics by a national association for the promotion and
7 regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary
8 action taken to mitigate sanctions likely to be imposed by such an organization.

9 (c) A right of action under this section does not accrue until the educational institution
10 discovers or by the exercise of reasonable diligence would have discovered the violation by the
11 athlete agent or former student-athlete.

12 (d) Any liability of the athlete agent or the former student-athlete under this section is
13 several and not joint.

14 (e) This Act does not restrict rights, remedies, or defenses of any person under law or equity.

15 Section 17. The secretary of the Department of Revenue and Regulation may assess a civil
16 penalty against an athlete agent not to exceed twenty-five thousand dollars for a violation of this
17 Act. All moneys received pursuant to this section shall be deposited in the state general fund.

18 Section 18. In applying and construing this Uniform Act, consideration must be given to the
19 need to promote uniformity of the law with respect to its subject matter among states that enact
20 it.

21 Section 19. The provisions of this Act governing the legal effect, validity, or enforceability
22 of electronic records or signatures, and of contracts formed or performed with the use of such
23 records or signatures conform to the requirements of section 102 of the Electronic Signatures
24 in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and

1 supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.
2 Section 20. If any provision of this Act or its application to any person or circumstance is
3 held invalid, the invalidity does not affect other provisions or applications of this Act which can
4 be given effect without the invalid provision or application, and to this end the provisions of this
5 Act are severable.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

527M0632

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 183** - 01/31/2006

Introduced by: Senators Kooistra, Abdallah, Apa, Broderick, Hundstad, and Kloucek and
Representatives Gillespie, Hennies, Hunt, Lange, Pederson (Gordon), and
Turbiville

1 FOR AN ACT ENTITLED, An Act to provide for distinctive motor vehicle license plates for
2 certain military veterans.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 32-5 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 An owner of a motor vehicle, who is a resident of this state, who has a valid South Dakota
7 driver's license, and who signs an affidavit attesting to the fact that he or she is an honorably
8 discharged veteran having served on active duty in the armed forces of the United States, may
9 apply to the secretary to receive a set of distinctive motor vehicle license plates designating the
10 person as a veteran. If an owner of a motor vehicle falsely attests that he or she is an honorably
11 discharged veteran having served on active duty in the armed forces of the United States, the
12 owner is guilty of a Class 2 misdemeanor. The plate may allow for additional indication of the
13 conflict, rank, or status of the veteran. The distinctive plates shall be displayed as set forth in
14 § 32-5-98, and the number plates shall be kept on or in the motor vehicle. The distinctive license



1 plate shall be reflectorized and validated each year with a sticker in the same manner as a
2 noncommercial license plate. In addition to the noncommercial license plate fees an additional
3 fee of ten dollars shall be charged for the distinctive license plates and any renewal stickers. If
4 it is determined that the veteran owner does not qualify for the distinctive plates or if the veteran
5 owner dies, the plates shall be surrendered to the county treasurer of the applicant's residence.
6 However, if the veteran owner dies, the distinctive plates may be retained by the veteran owner's
7 family, but may not be displayed on the vehicle beyond the expiration of the plates or renewal
8 stickers. The treasurer shall notify the secretary who shall make the necessary changes in the
9 registration file. The noncommercial number plates shall remain with the motor vehicle to
10 which they were issued. Failure to surrender the distinctive license plates as required by this Act
11 is a Class 2 misdemeanor.